



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

MAR 22 2013

REPLY TO THE ATTENTION OF:

S-6J

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Valley Asphalt Corporation  
Mr. Martin Lewis  
Tucker Ellis & West  
1150 Huntington Building  
925 Euclid Ave.  
Cleveland, Ohio 44115

Attention:- Mr. Martin Lewis, Tucker Ellis & West

Re: South Dayton Dump and Landfill Site, Moraine, Ohio  
Site Spill Identification Number: B52B  
Unilateral Administrative Order

Dear Mr. Lewis:

Enclosed please find a Unilateral Administrative Order issued by the U.S. Environmental Protection Agency under Section 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. §§ 9601-9675.

Please note that the order allows an opportunity for a conference if requested within three (3) business days after issuance of the order, or if no conference is requested, an opportunity to submit comments within seven (7) business days of issuance of the order.

If you have any questions regarding the Order, feel free to contact Thomas C. Nash, Associate Regional Counsel, at (312) 886-0552 or Steven Renninger, On-Scene Coordinator, at (513) 260-7849.

Sincerely,

Richard C. Karl, Director  
Superfund Division

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Region 5

IN THE MATTER OF:

South Dayton Dump and Landfill  
Moraine, Montgomery County, Ohio

Respondent:

Valley Asphalt Corporation

) Docket No.

**V-W-13-C-008**

) ADMINISTRATIVE ORDER  
) PURSUANT TO SECTION 106(a)  
) OF THE COMPREHENSIVE  
) ENVIRONMENTAL RESPONSE,  
) COMPENSATION, AND  
) LIABILITY ACT OF 1980,  
) AS AMENDED, 42 U.S.C.  
) § 9606(a)

**I. JURISDICTION AND GENERAL PROVISIONS**

This Order is issued pursuant to the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. § 9606(a), and delegated to the Administrator of the United States Environmental Protection Agency (U.S. EPA) by Executive Order No. 12580, January 23, 1987, 52 Federal Register 2923, and further delegated to the Regional Administrators by U.S. EPA Delegation Nos. 14-14-A and 14-14-B, and to the Director, Superfund Division, Region 5, by Regional Delegation Nos. 14-14-A and 14-14-B.

This Order pertains to property located at 1975 Dryden Road in Moraine, Montgomery County, Ohio (the South Dayton Dump and Landfill Site or the Site). This Order requires the Respondent to conduct removal activities described herein to abate an imminent and substantial endangerment to the public health, welfare or the environment that may be presented by the actual or threatened release of hazardous substances at or from the Site.

U.S. EPA has notified the State of Ohio of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

**II. PARTIES BOUND**

This Order applies to and is binding upon Respondent and Respondent's heirs, receivers, trustees, successors and assigns. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter such Respondent's responsibilities under this Order.

Respondent shall ensure that its contractors, subcontractors, and representatives comply with this Order. Respondent shall be responsible for any noncompliance.

### III. FINDINGS OF FACT

Based on available information, including the Administrative Record in this matter, U.S. EPA hereby finds that:

1. The Site is located at 1901 through 2153 Dryden Road and 2225 East River Road in Moraine, Ohio. The Site is bounded to the north and west by the Miami Conservancy District floodway (part of which is included in the definition of the Site), the Great Miami River Recreational Trail and the Great Miami River beyond. The Site is bounded to the east by Dryden Road with light industrial facilities beyond, to the southeast by residential and commercial properties along East River Road with a residential trailer park beyond, and to the south by undeveloped land with industrial facilities beyond.
2. The Site is a former industrial landfill located at 1975 Dryden Road in Moraine, Ohio. It encompasses a total of 80 acres, significant portions of which contain landfilled waste. Approximately 40 acres of the landfill have been built over and/or are being used for other commercial/industrial purposes.
3. Approximately 25,060 people live within a 4-mile radius of the Site. Six single-family residences are located on the northwest side of East River Road and are adjacent to the southeast boundary of the Site. A seventh single family home is located on the southeast side of East River Road and is within 300 feet of the Site. A trailer park with several residences is also situated approximately 300 feet southeast of the Site at the southeast intersection of Dryden Road and East River Road.
4. From 1941 to the present, various members of the Boesch and Grillot families have owned a major portion of the property where dumping was conducted. Most of the properties that comprise the Site were acquired over time by Horace Boesch and Cyril Grillot.
5. The landfill operated from the early 1940s to 1996 and includes a partially filled sand and gravel pit. The landfill contains household waste, drums, metal turnings, fly ash, foundry sand, demolition material, wooden pallets, asphalt, paint, paint thinner, oils, brake fluids, asbestos, solvents, transformers and other industrial waste. As the excavated areas of the Site were filled, some of the property was sold and/or leased to businesses including Valley Asphalt and other businesses along Dryden Road and East River Road. The Miami Conservancy District owns the southern part of the site including part of the large quarry pond.
6. Disposal of waste materials began at the Site in the early 1940s. Materials dumped at the Site included drummed wastes. Known hazardous substances were disposed at the Site, including drums containing hazardous waste from nearby facilities. Some of the drums contained cleaning solvents (1,1,1-trichloroethane ["TCA"]; methyl ethyl ketone ["MEK"]; and xylene); cutting oils; paint; stoddard solvents; and machine-tool, water-based coolants. The Site had previously accepted materials including oils, paint residue, brake fluids, chemicals for cleaning metals, solvents, etc. Large quantities of foundry sand and fly ash were dumped at the Site. Asbestos

was also dumped at the Site.

7. U.S. EPA conducted a screening site inspection of the Site in 1991. Ohio EPA conducted a site team evaluation prioritization of the landfill in 1996. In 2002, U.S. EPA conducted an aerial photographic analysis of the site.

8. On May 7, 1993, Valley Asphalt Corporation purchased the property where its facility is located from Cyril J. Grillot and Katherine A. Boesch. This property, formerly platted as Lots 3059 and 3060, is today platted as City Lot 5054. Montgomery County Auditor's records show Valley Asphalt Corporation to be the current owner and the payer of taxes on the property.

9. In 2000, Valley Asphalt removed several drums and 2,217 tons of contaminated soils from their property (northern area of the Site) that were uncovered when a sewer line was being excavated. U.S. EPA proposed the site to the National Priorities List in 2004.

10. In 2006, several potentially responsible parties (PRPs) for the Site agreed to conduct further studies and evaluate cleanup options at the Site under a Remedial Investigation/Feasibility Study (RI/FS). The RI/FS is being conducted under an Administrative Settlement Agreement and Order on Consent with U.S. EPA. In 2008, the PRPs agreed to conduct a streamlined RI/FS at the site. The PRPs conducted several investigations at the site from 2008 through 2010.

11. The 2008-2010 investigations conducted by the PRPs included geophysical surveys, test pit and test trench sampling, vertical aquifer sampling, landfill gas sampling and groundwater monitoring well installation and sampling. From these investigations, it was found that the groundwater contains vinyl chloride, trichloroethylene (TCE), 1,2-dichloroethene, arsenic, lead and other chemicals. Landfill gas contains methane, TCE and other volatile organic compounds. Based on the investigations, the PRPs agreed to divide the site work into two parts. Operable unit one (OU1) would involve evaluating cleanup alternatives to address 55 acres of the landfill, and would include cleanup alternatives that would allow on-site business to remain safely operating at the site.

12. In June 2012, U.S. EPA, in consultation with Ohio EPA, determined that additional data must be collected on groundwater and potential hot spots before selecting a remedy for OU1. U.S. EPA anticipated oversight of additional OU1 RI/FS field work, with a proposed cleanup plan and final OU1 remedy selection by March 2015.

13. Operable unit two (OU2) will involve more detailed investigations of the landfill materials in remaining site areas, surface water and sediment in the on-site Quarry Pond and the Great Miami River, floodplain soils, and off-site groundwater. U.S. EPA expects the PRPs to submit a work plan for the OU2 work in 2013.

14. In a letter dated June 5, 2012, U.S. EPA RPM Karen Cibulskis requested U.S. EPA Emergency Response Branch assistance to determine if the Site met the criteria for a time-critical removal action. The letter requested removal assistance in evaluating U.S. EPA's options for

addressing current and potential vapor intrusion risks at the Site, including whether removal authority could be appropriately used to implement mitigation measures to address all or some of the current and threatened risks posed by VOCs (primarily TCE) in sub-slab soil gas at 12 commercial/industrial buildings built over the landfill, and at an adjacent commercial/industrial building. PRP Vapor intrusion sampling in January and March 2012 has shown TCE sub-slab vapor levels as high as 5,600 parts per billion by volume [ppbv] and TCE indoor air vapor levels as high as 13 ppbv, a documented completed exposure pathway.

15. At the occupied building, located at 2031 Dryden Road, methane was detected in a laboratory sub-slab sample at 0.97%, which exceeds the Ohio Department of Health (ODH) sub-slab methane screening level of 0.5%. Based on field data methane was not detected in the indoor air.

16. In Building 2, located at 1903 Dryden Road, which is used for storage, methane was detected in a laboratory sub-slab sample above 100% of the lower explosive limit (LEL) (the sample concentration was 6.6% methane by volume), but was not detected in indoor air (based on field data). Building 2 is currently closed to access.

17. On July 6, 2012, the ODH provided health-based guidance to evaluate the results of vapor intrusion sub-slab and indoor air sampling for chemicals of concern at the Site. The Agency for Toxic Substances and Disease Registry (ATSDR) and the ODH identified residential and non-residential sub-slab and indoor air screening levels.

18. In a letter dated July 17, 2012, the Ohio EPA expressed concerns about the risk to human health from indoor air exposure to VOCs and the risk of explosive conditions from landfill gas. Ohio EPA views the Site as a threat to the on-Site and surrounding businesses and residences, and supports the Remedial Branch's request for assistance from the Removal Branch in evaluating options for addressing current and potential vapor intrusion risks at the Site.

19. Between July 12 and August 8, 2012, U.S. EPA conducted a Removal Site Investigation at the Site including residential and non-residential sub-slab sampling and the installation of soil gas vapor probes along the Site's eastern perimeter. U.S. EPA sampling has confirmed a completed exposure pathway with respect to vapor intrusion.

20. Vapor intrusion sampling results from 2012 by U.S. EPA and the PRPs have documented vapor intrusion is occurring at the Site. Five non-residential buildings have shown sub-slab TCE concentrations greater than the ODH sub-slab screening level (as high as 17,000 ppbv) and indoor air TCE concentrations greater than the ODH indoor air screening level of 2 ppbv (as high as 50 ppbv). One non-residential building has shown a crawl space PCE concentration at 38 ppbv which exceeds the ODH indoor air PCE screening level of 25 ppbv. In addition, one non-residential building has shown a sub-slab methane level of 6.6%. Methane is explosive between 5% and 15%.

21. U.S. EPA has documented methane levels using field screening and soil gas samples in GP-2

(12-foot and 16-foot depths) ranging from 2.5% to 24.1%. These results are greater than the ODH sub-slab methane screening level of 0.5% and Ohio EPA's perimeter regulatory level of 5% (lower explosive limit). GP-2 is located off-Site, on the eastside of Dryden Road and adjacent to a Dayton Power & Light building. The source of the methane levels in GP-2 has not been determined.

22. U.S. EPA sent an Administrative Order on Consent, to do the Work required on the Valley Asphalt property at the Site, to Valley Asphalt Corporation on December 26, 2012 which was received by Valley Asphalt on January 4, 2013. By a letter received by U.S. EPA on January 22, 2013, Valley Asphalt "declined to execute the Consent Order."

#### **IV. CONCLUSIONS OF LAW AND DETERMINATIONS**

Based on the Findings of Fact set forth above, and the Administrative Record supporting these removal actions, U.S. EPA determines that:

1. The South Dayton Dump and Landfill Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
2. Volatile Organic Compounds (VOCs) including trichloroethylene (TCE) and methane are "hazardous substances" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
3. The Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
4. Respondent Valley Asphalt Corporation is the present "owner" and "operator" of Parcel 5054 at the South Dayton Dump and Landfill Site, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20). Respondent is therefore a liable person under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).
5. The conditions described in the Findings of Fact above constitute an actual or threatened "release" into the "environment" as defined by Sections 101(8) and (22) of CERCLA, 42 U.S.C. §§ 9601(8) and (22).
6. The conditions present at the Site constitute a threat to public health, welfare, or the environment based upon the factors set forth in Section 300.415(b)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan, as amended (NCP), 40 CFR Part 300. These factors include, but are not limited to, the following:
  - a. Actual or potential exposure to nearby human populations, animals, or the food chain from hazardous substances, pollutants or contaminants; this factor is present at the Site due to the existence of vapor intrusion which occurs when vapors produced by a chemical spill or

groundwater contamination plume migrate through soil into the foundations of structures and into the indoor air. When chemicals are spilled on the ground, they will seep into the soil and make their way into the groundwater. VOCs, including TCE, produce vapors that travel through soil. These vapors can enter a home or building through cracks in the foundation or into a basement with a dirt floor or concrete slab.

To date, U.S. EPA and the PRPs have conducted vapor intrusion sampling and have documented the following VOC and methane exceedances:

- One non-residential building (2003 Dryden Road – Building 2) showed a sub-slab 1,1-DCA level greater than the ODH sub-slab 1,1-DCA screening level of 160 ppbv, with a high 1,1-DCA concentration of 4,100 ppbv.
- Three non-residential buildings (1903 Dryden Road – Building 2, 2003 Dryden Road – Building 2 and 2031 Dryden Road – Building 1) showed sub-slab benzene levels greater than the ODH sub-slab benzene screening level of 20 ppbv, with a high benzene concentration of 540 ppbv in the sub-slab vapor sample collected from beneath 2031 Dryden Road-Building 1. An indoor air sample collected at 2003 Dryden Road – Building 2 showed a benzene concentration of 2.4 ppbv, which exceeds the ODH indoor air benzene screening level of 2 ppbv. This documents a completed exposure pathway for vapor intrusion.
- Two non-residential buildings (2015 Dryden Road, Building 1 and 2031 Dryden Road, Building 1) showed sub-slab cis-1,2-DCE levels greater than the ODH sub-slab cis-1,2-DCE screening level of 370 ppbv, with a high cis-1,2-DCE concentration of 27,000 ppbv at 2031 Dryden Road, Building 1.
- Three non-residential buildings (1903 Dryden Road, Building 2; 2003 Dryden Road, Building 2; and 2031 Dryden Road, Building 1) showed sub-slab vinyl chloride levels greater than the ODH sub-slab vinyl chloride screening level of 20 ppbv, with a high vinyl chloride concentration of 5,500 ppbv.
- Thirteen non-residential buildings showed sub-slab TCE levels greater than the ODH sub-slab TCE screening level of 20 ppbv, with a high TCE concentration of 17,000 ppbv. Five of the thirteen non-residential buildings show indoor air TCE levels greater than the ODH indoor air TCE screening level of 2 ppbv, with a high TCE concentration of 50 ppbv, documenting a completed exposure pathway. This indoor air TCE result is 2.5 times greater than the removal action screening level provided by ODH. In addition, one non-residential on-Site structure showed a crawl space PCE level greater than the ODH indoor air PCE screening level of 25 ppbv, with a PCE concentration of 38 ppbv.
- One non-residential building (2031 Dryden Road – Building 1) showed a sub-slab m,p-xylene sub-slab concentration of 2,100 ppbv, which exceeds the m,p-xylene screening

level of 2,000 ppbv; and an o-xylene sub-slab concentration of 2,000 ppbv, which equals the o-xylene screening level of 2,000 ppbv.

- 2031 Dryden Road, Building 1 showed a sub-slab methane level of 2.2% and 1903 Dryden Road, Building 2 showed a sub-slab methane level of 6.6%, which exceeds the ODH methane sub-slab screening level of 0.5%. Methane is explosive between 5% and 15%.
- U.S. EPA observed detectable methane concentrations in one soil gas probe, GP-2, using a GEM-2000 methane meter. GP-2 contains nested soil gas sampling depths of 12-foot bgs and at 16-foot bgs. The GP-2 soil gas probe at the 12-foot depth showed methane levels ranging from 14.7% to 17.6%. The GP-2 soil gas probe at the 16-foot depth showed methane levels ranging from 22.2% to 24.1%. The methane levels in GP-2 at depths of 12 and 16 feet bgs exceed Ohio EPA's perimeter regulatory level of 5% (lower explosive limit). GP-2 is located off-Site and on the eastern side of Dryden Road.

There is actual vapor intrusion exposure occurring and there is a potential for additional vapor intrusion to occur at this Site.

TCE is a hazardous substance within the meaning of Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) because it is listed at 40 CFR Section 302.4. Historical sampling, and PRP and U.S. EPA sub-slab and indoor air sampling results indicate that TCE vapors are migrating into non-residential buildings at chronic levels that ODH considers harmful to human health.

TCE is a man-made chemical that is widely used as a cleaner to remove grease from metal parts. TCE is a nonflammable, colorless liquid with a sweet odor. Exposure to TCE at very high concentrations (particularly in closed, poorly ventilated areas) may cause headaches, lung irritation, dizziness, poor coordination (clumsiness), and difficulty speaking. According to the ODH, the evidence that TCE is a human carcinogen has been under review by health organizations since 2001. The U.S. Department of Health and Human Services considers TCE to be "reasonably anticipated to be a human carcinogen" based on limited evidence of carcinogenicity from studies of humans and sufficient evidence of carcinogenicity from studies of laboratory animals. A report recently released by the National Academies of Science National Research Council (2006) has stated that "evidence on cancer and other health risks from TCE exposure has strengthened since 2001", pointing to studies of human populations that support "the conclusion that TCE is a potential cause of kidney cancer." Other ecological studies of communities exposed to TCE in drinking water supplies in Massachusetts, New Jersey, and North Carolina have suggested an association between these exposures and elevated levels of leukemia in the exposed population.

b. Threat of fire or explosion; this factor is present at the Site due to the existence of explosive conditions from landfill gas.



The PRPs conducted vapor intrusion sampling in January and March 2012. Sub-slab sampling showed methane percentages greater than the ODH sub-slab screening level of 0.5% at two non-residential properties.

In July 2012, U.S. EPA documented methane at 2.5% at the 16-foot depth of soil gas probe GP-2 and in August 2012, U.S. EPA documented methane at 2.2% in a sub-slab sample collected from 2031 Dryden Road. These results exceed the ODH sub-slab screening level of 0.5%.

U.S. EPA has documented methane levels in GP-2 (12-foot and 16-foot depths) ranging from 2.5% to 24.1% at off-site locations (City of Moraine property). These results are greater than the ODH sub-slab methane screening level of 0.5% and exceed Ohio EPA's perimeter regulatory level of 5% (lower explosive limit). GP-2 is located off-Site, on the eastside of Dryden Road and adjacent to a DP&L building. Methane is flammable between 5% and 15%. Methane's LEL is 5% and the UEL is 15% methane per volume of air.

At the Site, methane was detected in four laboratory sub-slab soil gas samples above 10% of the LEL (greater than 0.5% methane) at non-residential buildings at the Site. At another building, methane was detected (at 6.6%) in a laboratory sub-slab soil gas sample above 100% of the LEL (greater than 5%). This building has the potential for an explosion/fire hazard if a spark or ignition source is present. This building is now closed to access.

Because methane is extremely flammable in the presence of oxygen and an ignition source (open flame, pilot light), the main public health threat posed from methane is the physical explosion hazard posed by methane levels between 5% and 15% by volume in the air.

Ohio Revised Code (ORC) 3734.041 provides that explosive gases shall be considered to endanger human health or safety or the environment if concentrations of methane generated by the landfill in landfill structures, excluding gas control or recovery system components, exceed 25% of the LEL (or 1.25% methane in the indoor air) or if concentrations of methane generated by the landfill at the landfill boundary exceed the LEL (or 5% methane). U.S. EPA documented methane levels in GP-2 ranging from 14.7% to 24.1%. GP-2 is located about 75-feet east of the eastern boundary of the Site. These methane levels exceed the levels specified at ORC 3734.041.

c. The unavailability of other appropriate federal or state response mechanisms to respond to the release; this factor supports the actions required by this Settlement Agreement at the Site because Ohio EPA does not have the resources to respond to this Site.

In a letter dated July 17, 2012, Ohio EPA expressed concerns about the risk to human health from indoor air exposure to VOCs and the risk of explosive conditions from landfill gas, Ohio EPA views the Site as a threat to the on-site and surrounding businesses and residences, and supports the Remedial Branch's request for assistance from the Removal Branch in evaluating options for addressing current and potential vapor intrusion risks at the South Dayton Dump and Landfill Site.

7. The actual or threatened release of hazardous substances from the Site may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

8. The removal actions required by this Order are necessary to protect the public health, welfare, or the environment, and are consistent with the NCP and CERCLA.

#### **V. ORDER**

Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this Site, U.S. EPA hereby orders that Respondent perform the following actions:

1. **Notice of Intent to Comply**

Respondent shall notify U.S. EPA in writing within 3 business days after the effective date of this Order of Respondent's irrevocable intent to comply with this Order. Failure of Respondent to provide such notification within this time period shall be a violation of this Order. In addition to the U.S. EPA representatives identified in Section V.2 below, a copy of the written notice of intent to comply shall also be sent to: Thomas Nash, Associate Regional Counsel, Office of Regional Counsel, 77 West Jackson Boulevard, C-14J, Chicago, Illinois, 60604-3590 and Superfund Record Center, 77 West Jackson Boulevard, SRC-7J, Chicago, Illinois, 60604-3590. The written notice of intent to comply shall reference the Site name and the docket number of this Order.

2. **Designation of Contractor, Project Coordinator, and On-Scene Coordinator**

Respondent shall retain a contractor to implement the removal actions. Respondent shall notify U.S. EPA of Respondent's qualifications or the name and qualifications of such contractor(s) within 5 business days of the effective date of this Order. Respondent shall also notify U.S. EPA of the name and qualifications of any other contractors or subcontractors retained to perform work under this Order at least 5 business days prior to commencement of such work. U.S. EPA retains the right to disapprove of any of the contractors and/or subcontractors retained by the Respondent. If U.S. EPA disapproves a selected contractor, Respondent shall retain a different contractor within 2 business days following U.S. EPA's disapproval and shall notify U.S. EPA of that contractor's name and qualifications within 3 business days of U.S. EPA's disapproval.

The contractor(s) retained by the Respondent must demonstrate compliance with American National Standards Institute/American Society for Quality Control (ANSI/ASQC) E-4-2004, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), by

submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with "EPA Requirements for Quality Management Plans (QA/R-2)" (EPA/240/B-01/002), or equivalent documentation as required by U.S. EPA. Any decision not to require submission of the contractor's QMP should be documented in a memorandum from the OSC and Regional quality assurance personnel to the Site file.

Within 5 business days after the effective date of this Order, the Respondent shall designate a Project Coordinator who shall be responsible for administration of all the Respondent's actions required by the Order and submit the designated coordinator's name, address, telephone number, and qualifications to U.S. EPA. To the greatest extent possible, the Project Coordinator shall be present on-site or readily available during site work. U.S. EPA retains the right to disapprove of any Project Coordinator named by the Respondent. If U.S. EPA disapproves a selected Project Coordinator, Respondent shall retain a different Project Coordinator within 3 business days following U.S. EPA's disapproval and shall notify U.S. EPA of that person's name and qualifications within 4 business days of U.S. EPA's disapproval. Receipt by Respondent's Project Coordinator of any notice or communication from U.S. EPA relating to this Order shall constitute receipt by Respondent.

The U.S. EPA has designated Steven Renninger of Emergency Response Branch 1, Region 5, as its On-Scene Coordinator (OSC) and Leslie Patterson as its Alternate OSC. Respondent shall direct all submissions required by this Order to OSC Steve Renninger at U.S. EPA/ERT, 26 West Martin Luther King Drive, Cincinnati, Ohio 45268, and to OSC Leslie Patterson at: U.S. EPA, SR-6J, 77 West Jackson Boulevard, Chicago, Illinois 60604, by certified or express mail. Respondent shall also send a copy of all submissions to Thomas Nash, Associate Regional Counsel, 77 West Jackson Boulevard, C-14J, Chicago, Illinois, 60604-3590. All Respondents are encouraged to make their submissions to U.S. EPA on recycled paper (which includes significant post-consumer waste paper content where possible) and using two-sided copies.

### 3. Work to Be Performed

Respondent shall perform, at a minimum, the following response activities:

- a. Develop and implement a Site Health and Safety Plan for Work to be performed at the Valley Asphalt Property. For purposes of this Administrative Order, "Valley Asphalt Property" shall mean that portion of the Site owned by Valley Asphalt Corporation, consisting of City Lot 5054;
- b. For Valley Asphalt Property, if the ODH Sub-Slab or Indoor Air Screening Level for a contaminant of concern (TCE, PCE, methane, etc) is exceeded for a residential structure, design and install a vapor abatement mitigation system in the structure(s) impacted by subsurface gas migration. The abatement system will include installation of a sub-slab depressurization system (SSDS) or crawl space depressurization system, sealing cracks in walls and floors of the basement, and sealing drains that could be a pathway. The vapor

abatement mitigation system will be designed to control levels of methane and VOCs to below ODH sub-slab and indoor air screening levels;

- c. For Valley Asphalt Property, if the ODH Sub-Slab or Indoor-Air Screening Level for a contaminant of concern (TCE, PCE, methane, etc) is exceeded for a commercial structure, design and install a vapor abatement mitigation system in the structure(s) impacted by subsurface gas migration. The abatement system will include installation of a SSDS, sealing cracks in walls and floors, and sealing drains that could be a pathway. The vapor abatement mitigation system will be designed to control levels of methane and VOCs to below ODH sub-slab and indoor air screening levels; and
- d. For Valley Asphalt Property, develop and implement a performance sample plan to confirm that ODH screening levels are achieved for contaminants of concern following installation of on-site vapor abatement mitigation systems.

### 3.1 Work Plan and Implementation

Within 10 business days after the effective date of this Order, the Respondent shall submit to U.S. EPA for approval a draft Work Plan for performing the removal activities set forth above. The draft Work Plan shall provide a description of, and an expeditious schedule for, the activities required by this Order. The Work Plan shall include a Quality Assurance Project Plan (QAPP). The following documents shall be used for the development of QAPPs for Region 5 Superfund sites:

- The Uniform Federal Policy for Quality Assurance Projects Plans (UFP-QAPP), OSWER Directive 9272.0-17; [the QAPP format can be found at <http://www.epa.gov/fedfac/documents/qualityassurance.htm>];
- EPA Requirements for Quality Assurance Project Plans EPA QA/R-5, March 2001, Reissued May 2006;

The following guidance may be used in conjunction with the requirements above:

- Guidance for the Quality Assurance Project Plans EPA QA/G-5, December 2002.
- Guidance on Choosing a Sampling Design for Environmental Data Collection EPA QA/G-5S, December 2002.

U.S. EPA may approve, disapprove, require revisions to, or modify the draft Work Plan. If U.S. EPA requires revisions, Respondent shall submit a revised draft Work Plan within 7 business days of notification. Respondent shall implement the Work Plan as finally approved in writing by U.S. EPA in accordance with the schedule approved by U.S. EPA. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be fully enforceable under this Order. Respondent shall notify U.S. EPA at least 48 hours prior to performing any on-site work pursuant to the U.S. EPA approved Work Plan.

Respondent shall not commence or undertake any removal actions at the Site without prior U.S. EPA approval.

### 3.2 Health and Safety Plan

Within 10 business days after the effective date of this Order, the Respondent shall submit a plan for U.S. EPA review and comment that ensures the protection of the public health and safety during performance of on-site work under this Order. This plan shall comply with applicable Occupational Safety and Health Administration (OSHA) regulations found at 29 CFR Part 1910. If U.S. EPA determines it is appropriate, the plan shall also include contingency planning. Respondents shall incorporate all changes to the plan recommended by U.S. EPA, and implement the plan during the pendency of the removal action.

### 3.3 Quality Assurance and Sampling

All sampling and analyses performed pursuant to this Order shall conform to U.S. EPA direction, approval, and guidance regarding sampling, quality assurance/quality control (QA/QC), data validation, and chain of custody procedures. Respondent shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate U.S. EPA guidance. Respondent shall follow, as appropriate, "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures" (OSWER Directive No. 9360.4-01, April 1, 1990), as guidance for QA/QC and sampling. Respondent shall only use laboratories that have a documented Quality System that complies with ANSI/ASQC E-4 2004, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2) (EPA/240/B-01/002, March 2001, Reissued May 2006)," or equivalent documentation as determined by U.S. EPA. U.S. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program (NELAP) as meeting the Quality System requirements.

Upon request by U.S. EPA, Respondent shall have such a laboratory analyze samples submitted by U.S. EPA for quality assurance monitoring. Respondent shall provide to U.S. EPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis. Respondent shall also ensure provision of analytical tracking information consistent with OSWER Directive No. 9240.0-2B, "Extending the Tracking of Analytical Services to PRP-Lead Superfund Sites."

Upon request by U.S. EPA, Respondent shall allow U.S. EPA or its authorized representatives to take split and/or duplicate samples of any samples collected by Respondent or its contractors or agents while performing work under this Order. Respondent shall notify U.S. EPA not less than 3 business days in advance of any sample collection activity. U.S. EPA shall have the right to take any additional samples that it deems necessary.

### 3.4 Reporting

Respondent shall submit a monthly written progress report to U.S. EPA concerning activities undertaken pursuant to this Order, beginning 30 calendar days after the date of U.S. EPA's approval of the Work Plan, until termination of this Order, unless otherwise directed by the OSC. These reports shall describe all significant developments during the preceding period, including the work performed and any problems encountered, analytical data received during the reporting period, and developments anticipated during the next reporting period, including a schedule of work to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

Respondent and any successor in title shall, at least 30 days prior to the conveyance of any interest in real property at the Valley Asphalt Property, give written notice of this Order to the transferee and written notice of the proposed conveyance to U.S. EPA and the State. The notice to U.S. EPA and the State shall include the name and address of the transferee. The party conveying such an interest shall require that the transferee will provide access as described in Section V.4 (Access to Property and Information).

### 3.5 Final Report

Within 60 calendar days after completion of all removal actions required under this Order, the Respondent shall submit for U.S. EPA review a final report summarizing the actions taken to comply with this Order. The final report shall conform to the requirements set forth in Section 300.165 of the NCP. The final report shall also include a good faith estimate of total costs incurred in complying with the Order, a listing of quantities and types of materials removed, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destinations of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits).

The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

Under penalty of law, I certify that, to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of this report, the information submitted is true, accurate, and complete.

### 4. Access to Property, Cooperation, and Information

Respondent shall provide or obtain access as necessary to the Valley Asphalt Property and all appropriate off-site areas, and shall provide access to all records and documentation related to the conditions at the Valley Asphalt Property and the activities conducted pursuant to this Order.

Such access shall be provided to U.S. EPA, its employees, contractors, agents, consultants, designees, representatives, and State of Ohio representatives. These individuals shall be permitted to move freely at the Valley Asphalt Property and appropriate off-site areas in order to conduct activities which U.S. EPA determines to be necessary. Respondent shall submit to U.S. EPA, upon request, the results of all sampling or tests and all other data generated by Respondent or its contractors, or on the Respondent's behalf during implementation of this Order.

Respondent shall cooperate with and assist U.S. EPA, its employees, contractors, agents, consultants, designees, representatives, and State of Ohio representatives to accomplish and complete the removal actions required under this Order.

Where work under this Order is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall obtain all necessary access agreements within 14 calendar days after the effective date of this Order, or as otherwise specified in writing by the OSC. Respondent shall immediately notify U.S. EPA if, after using its best efforts, it is unable to obtain such agreements. Respondent shall describe in writing its efforts to obtain access. U.S. EPA may then assist Respondent in gaining access, to the extent necessary to effectuate the response activities described herein, using such means as U.S. EPA deems appropriate.

5. Record Retention, Documentation, Availability of Information

Respondent shall preserve all documents and information, in its possession or the possession of its contractors, subcontractors or representatives, relating to work performed under this Order, or relating to the hazardous substances found on or released from the Site, for six years following completion of the removal actions required by this Order. At the end of this six year period and at least 60 days before any document or information is destroyed, Respondent shall notify U.S. EPA that such documents and information are available to U.S. EPA for inspection, and upon request, shall provide the originals or copies of such documents and information to U.S. EPA. In addition, Respondent shall provide documents and information retained under this Section at any time before expiration of the six year period at the written request of U.S. EPA. Any information that Respondent is required to provide or maintain pursuant to this Order is not subject to the Paperwork Reduction Act of 1995, 44 U.S.C. § 3501 *et seq.*

6. Off-Site Shipments

All hazardous substances, pollutants or contaminants removed off-site pursuant to this Order for treatment, storage or disposal shall be treated, stored, or disposed of at a facility in compliance, as determined by U.S. EPA, with the U.S. EPA Off-Site Rule, 40 CFR § 300.440, 58 Fed. Reg. 49215 (Sept. 22, 1993).

7. Compliance With Other Laws

All actions required pursuant to this Order shall be performed in accordance with all applicable

local, state, and federal laws and regulations except as provided in Section 121(e) of CERCLA and 40 CFR § 300.415(j). In accordance with 40 CFR §300.415(j), all on-site actions required pursuant to this Order shall, to the extent practicable, as determined by U.S. EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements under federal environmental or state environmental or facility siting laws.

8. Emergency Response and Notification of Releases

If any incident, or change in Site conditions, during the activities conducted pursuant to this Order causes or threatens to cause an additional release of hazardous substances from the Site or an endangerment to the public health, welfare, or the environment, the Respondent shall immediately take all appropriate action to prevent, abate or minimize such release, or endangerment caused or threatened by the release. Respondent shall also immediately notify the OSC or, in the event of his/her unavailability, shall notify the Regional Duty Officer, Emergency Response Branch, Region 5 at (312) 353-2318, of the incident or Site conditions.

Respondent shall submit a written report to U.S. EPA within 7 business days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. Respondent shall also comply with any other notification requirements, including those in Section 103 of CERCLA, 42 U.S.C. § 9603, and Section 304 of the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. § 11004.

**VI. AUTHORITY OF THE U.S. EPA ON-SCENE COORDINATOR**

The OSC shall be responsible for overseeing the implementation of this Order. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any work required by this Order, or to direct any other response action undertaken by U.S. EPA or Respondent at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

U.S. EPA and Respondent shall have the right to change their designated OSC or Project Coordinator. U.S. EPA shall notify the Respondent, and Respondent shall notify U.S. EPA, as early as possible before such a change is made, but in no case less than 24 hours before such a change. Notification may initially be made orally, but shall be followed promptly by written notice.

**VII. PENALTIES FOR NONCOMPLIANCE**

Violation of any provision of this Order may subject Respondent to civil penalties of up to \$37,500 per violation per day, as provided in Section 106(b)(1) of CERCLA, 42 U.S.C.



§ 9606(b)(1) and as adjusted by 69 Fed. Reg. 7121-27 (Feb. 13, 2004) (codified at 40 C.F.R. § 19.4) pursuant to the Debt Collection Improvement Act of 1996. Respondent may also be subject to punitive damages in an amount up to three times the amount of any cost incurred by the United States as a result of such violation, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Should Respondent violate this Order or any portion hereof, U.S. EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and/or may seek judicial enforcement of this Order pursuant to Section 106 of CERCLA, 42 U.S.C. § 9606.

#### **VIII. REIMBURSEMENT OF COSTS**

Respondent shall reimburse U.S. EPA, upon written demand, for all response costs incurred by the United States in overseeing Respondent's implementation of the requirements of this Order. U.S. EPA may submit to Respondent on a periodic basis a bill for all response costs incurred by the United States with respect to this Order. U.S. EPA's Itemized Cost Summary, or such other summary as certified by U.S. EPA, shall serve as the basis for payment.

Respondent shall, within 30 days of receipt of the bill, remit a cashier's or certified check for the amount of those costs made payable to the "Hazardous Substance Superfund," to the following address:

U.S. Environmental Protection Agency  
Superfund Payments  
Cincinnati Finance Center  
Post Office Box 979076  
St. Louis, Missouri 63197-9000

Respondent shall simultaneously transmit a copy of the check to the Director, Superfund Division, U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois, 60604-3590. Payments shall be designated as "Response Costs -- South Dayton Dump and Landfill Site" and shall reference the payer's name and address, the U.S. EPA site identification number B52B, and the docket number of this Order.

Interest at a rate established by the Department of the Treasury pursuant to 31 U.S.C. § 3717 and 4 CFR § 102.13 shall begin to accrue on the unpaid balance from the day after the expiration of the 30 day period notwithstanding any dispute or an objection to any portion of the costs.

#### **IX. RESERVATION OF RIGHTS**

Nothing herein shall limit the power and authority of U.S. EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or

contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent U.S. EPA from seeking legal or equitable relief to enforce the terms of this Order. U.S. EPA also reserves the right to take any other legal or equitable action as it deems appropriate and necessary, or to require the Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law.

#### **X. OTHER CLAIMS**

By issuance of this Order, the United States and U.S. EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States or U.S. EPA shall not be a party or be held out as a party to any contract entered into by the Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out activities pursuant to this Order. Each party shall bear its own costs and attorneys fees in connection with the action resolved by this Order.

This Order does not constitute a pre-authorization of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. § 9611(a)(2).

Nothing in this Order constitutes a satisfaction of or release from any claim or cause of action against the Respondent(s) or any person not a party to this Order, for any liability such person may have under CERCLA, other statutes, or the common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106(a) or 107(a) of CERCLA, 42 U.S.C. §§ 9606(a), 9607(a).

#### **XI. MODIFICATIONS**

Modifications to any plan or schedule may be made in writing by the OSC or at the OSC's oral direction. If the OSC makes an oral modification, it will be memorialized in writing within 7 business days; however, the effective date of the modification shall be the date of the OSC's oral direction. The rest of the Order, or any other portion of the Order, may only be modified in writing by signature of the Director, Superfund Division, Region 5.

If Respondent seeks permission to deviate from any approved plan or schedule, Respondent's Project Coordinator shall submit a written request to U.S. EPA for approval outlining the proposed modification and its basis.

No informal advice, guidance, suggestion, or comment by U.S. EPA regarding reports, plans, specifications, schedules, or any other writing submitted by the Respondent shall relieve Respondent of its obligations to obtain such formal approval as may be required by this Order, and to comply with all requirements of this Order unless it is formally modified.

## **XII. NOTICE OF COMPLETION**

After submission of the Final Report, Respondent may request that U.S. EPA provide a Notice of Completion of the work required by this Order. If U.S. EPA determines, after U.S. EPA's review of the Final Report, that all work has been fully performed in accordance with this Order, except for certain continuing obligations required by this Order (e.g., record retention), U.S. EPA will provide written notice to the Respondent. If U.S. EPA determines that any removal activities have not been completed in accordance with this Order, U.S. EPA will notify the Respondent, provide a list of the deficiencies, and require that Respondent modify the Work Plan to correct such deficiencies. The Respondent shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the U.S. EPA notice. Failure to implement the approved modified Work Plan shall be a violation of this Order.

## **XIII. ACCESS TO ADMINISTRATIVE RECORD**

The Administrative Record supporting these removal actions is available for review during normal business hours in the U.S. EPA Record Center, Region 5, 77 W. Jackson Blvd., Seventh Floor, Chicago, Illinois. Respondent may contact Thomas C. Nash, Associate Regional Counsel, at (312) 886-0552 to arrange to review the Administrative Record. An index of the Administrative Record is attached to this Order.

## **XIV. OPPORTUNITY TO CONFER**

Within 3 business days after issuance of this Order, Respondent may request a conference with U.S. EPA. Any such conference shall be held within 5 business days from the date of the request, unless extended by agreement of the parties. At any conference held pursuant to the request, Respondent may appear in person or be represented by an attorney or other representative.

If a conference is held, Respondent may present any information, arguments or comments regarding this Order. Regardless of whether a conference is held, Respondent may submit any information, arguments or comments (including justifications for any assertions that the Order should be withdrawn against a Respondent), in writing to U.S. EPA within 2 business days following the conference, or within 7 business days of issuance of the Order if no conference is requested. This conference is not an evidentiary hearing, does not constitute a proceeding to challenge this Order, and does not give Respondent a right to seek review of this Order. Requests for a conference shall be directed to Thomas C. Nash, Assistant Regional Counsel, at (312) 886-0552. Written submittals shall be directed as specified in Section V.2 of this Order.

**XV. SEVERABILITY**

If a court issues an order that invalidates any provision of this Order or finds that Respondent has sufficient cause not to comply with one or more provisions of this Order, Respondent shall remain bound to comply with all provisions of this Order not invalidated by the court's order.

**XVI. EFFECTIVE DATE**

This Order shall be effective 10 business days following issuance unless a conference is requested as provided herein. If a conference is requested, this Order shall be effective 5 business days after the day of the conference.

IT IS SO ORDERED

BY: Richard C. Karl  
Richard C. Karl, Director  
Superfund Division  
United States Environmental Protection Agency  
Region 5

DATE: 3-21-13

ATTACHMENT A  
INDEX TO THE ADMINISTRATIVE RECORD

U.S. ENVIRONMENTAL PROTECTION AGENCY  
REMOVAL ACTION

ADMINISTRATIVE RECORD  
FOR  
SOUTH DAYTON DUMP AND LANDFILL SITE  
MORaine, MONTGOMERY COUNTY, OHIO

ORIGINAL  
MARCH 13, 2013  
SEMS ID:

<u>NO.</u>	<u>SEMS ID</u>	<u>DATE</u>	<u>AUTHOR</u>	<u>RECIPIENT</u>	<u>TITLE/DESCRIPTION</u>	<u>PAGES</u>
1	265879	03/30/03	Techlaw Inc	U.S. EPA	Techlaw Inc - Draft Title Search Addendum - Reference #6	42
2	262758	08/15/06	Karl, R., U.S. EPA	Respondents	Administrative Settlement Agreement & Order On Consent For RI/Fs (Signed) - V-W-06-C-852	106
3	437166	06/09/11	CRA	U.S. EPA	Cra - Fig 3: 2009 & 2010 Soil Vapor Sampling Results That Exceed EPA Screening Levels (VOCS)	1
4	437167	06/09/11	CRA	U.S. EPA	Cra - Fig 3: 2009 & 2010 Soil Vapor Sampling Results That Exceed EPA Screening Levels (Methane)	1
5	437168	11/04/11	Cibulskis, K., U.S. EPA	K., Conestoga - Rovers & Associates	EPA - Modified Vapor Intrusion Study Work Plan W/Cover Letter	125
6	437169	06/01/12	U.S. EPA	Public	EPA - Site Summary/Fact Sheet	3
7	437170	06/01/12	Ohio Dept. of Health	Public	Fact Sheet: Methane: Answers To FAQs	2
8	437171	06/05/12	Cibulskis, K., U.S. EPA	Renninger, S., U.S. EPA	EPA Memo Re: Request For Removal Assistance In Evaluating Vapor Intrusion Data & Removal Authority	2